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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re N.M. et al., Persons Coming Under
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

C059709

(Super. Ct. Nos. JD219751,
JD219752, JD219753,
JD219754, JD222997)

D.M. (appellant), father of three of the minors and step father of the other two minors, appeals from the juvenile court's order granting a permanent restraining order against him. (Welf. & Inst. Code, § 213.5, subds. (a) & (d); undesignated statutory references are to the Welfare and Institutions Code.) Appellant claims the court erred by issuing the restraining order. Disagreeing with this contention, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2003, petitions were filed by the Sacramento County Department of Health and Human Services (the Department) concerning N.M. and C.S. (newborn and 17 months old, respectively), who are appellant's biological children, as well as H.L. and R.L., who have a different biological father, after N.M. tested positive for marijuana at birth. The petitions alleged that the minors' mother had a substance abuse problem, the home was dirty and unsafe, the parents "'whooped'" the minors with a belt and their hands, and appellant was a registered sexual offender. Although the allegation regarding appellant's sexual offender status was later dismissed (as was the allegation pertaining to the condition of the home), appellant acknowledged he had fondled two eight-year-old female neighbors in 1990, for which he was sentenced to eight years in state prison. He also admitted he had not participated in counseling since being released from prison and did not have a certificate of completion of a sexual offender's program.

The juvenile court sustained the other allegations in the petitions and ordered the minors returned home with family maintenance services.

There were continuing concerns about the family, including the condition of the home and appellant's aggressive and inappropriate behavior with the minors and service providers, and family maintenance services were continued at each subsequent review hearing.

In June 2005, J.M. was born. Three months later, supplemental petitions were filed, as well as an original petition regarding J.M., based on the "filthy" condition of the home and the minors.

The minors were returned to the parents' care a week later, but the following month, subsequent petitions were filed regarding the older minors and an amended petition as to J.M., after it was discovered that N.M. (now two years old) had a third-degree, nonaccidental burn on her abdomen. The minors were detained and, subsequently, the allegations in the petitions were sustained.

A psychological evaluation of appellant completed prior to the dispositional hearing found that he exhibited "disturbing signs of sexual preoccupation or unresolved sexual issues," and the evaluator expressed "serious concerns about proceeding with reunification services for [him] involving young female children for whom he might be responsible." A short-term counseling report regarding appellant stated that he did not consider himself to have any parenting deficits and had "difficulty taking responsibility for his present interactions with the legal system."

At the dispositional hearing, the juvenile court adopted the social worker's recommended findings and ordered termination of reunification services as to the older minors and denial of services as to J.M. The court set the matters for a hearing

pursuant to section 366.26 to select and implement permanent plans for the minors.

Appellant and the mother sought an extraordinary writ challenging the juvenile court's order (Cal. Rules of Court, rule 8.452), and in January 2007, we issued a writ of mandate directing the juvenile court to vacate its orders because it had failed to make sufficient findings to support the termination of services as to the older minors and the denial of services as to J.M. (*Dennis M. v. Superior Court* (Jan. 19, 2007, C053699) [nonpub. opn.] .)

Meanwhile, N.M., C.S. and J.M. were placed with appellant's adult son and his wife. Initially, the couple were "open to continuing a relationship between the children" and their parents. According to the adult son, appellant and the minors' mother visited the minors "a couple of times each week" at his home.

In March 2007, appellant was incarcerated for failing to register as a sexual offender. Appellant's parole officer felt that appellant was "a high risk of perpetrating on minors again, so much so that he ha[d] informed [appellant] that he [was] not to be around any children, including his own biological children, until further notice by the Department of [Parole]."

The social worker recommended a continuation of the mother's reunification services but termination of appellant's services with no contact between him and the minors. By the time of the report, appellant's adult son felt "extremely

concerned about [the minors'] safety if returned to [appellant]." The social worker concluded that the risk of returning the minors to appellant was extremely high, based in part on his parole officer's assessment that he was considered a high risk for reoffending against children, as well as the conclusions contained in appellant's psychological evaluation the previous year. The social worker also expressed concern about the mother's ability to protect the minors from sexual predators, as appellant and the father of the other minors were both registered sex offenders.

According to an addendum report in August 2007, the mother continued to be dependent on appellant and had brought a small child to visit him in custody despite being aware that he was not allowed to have contact with children.¹ When he was released from jail, appellant moved to a trailer on the same block as the mother's home and was observed walking down the street where she lived. In therapy, the mother denied appellant was a risk to children and placed blame on the Department for the minors' status as dependents. According to appellant's adult son, the mother spent most of her visits talking to his wife about appellant.

At the review hearing in September 2007, the juvenile court ordered additional reunification services for the mother and

¹ At the time, appellant and the mother had a newborn child who was not the subject of dependency proceedings.

terminated appellant's services. The court ordered no contact between appellant and the minors.

According to a social worker's report in January 2008, N.M. (now four years old) had been referred for therapy after she disclosed to her caregivers that appellant had inappropriately touched her. Appellant's parole officer reported that appellant and the mother maintained contact, which concerned the social worker. However, the mother was residing with a relative and did not appear to be dependent on appellant. At the subsequent review hearing, the juvenile court again ordered no contact between appellant and the minors.

In March 2008, the mother filed an application for a restraining order against appellant, alleging he was a "PC 290 registrant" and that N.M. had disclosed he had touched her on her "'girly girly' parts." A temporary restraining order was issued.

At the subsequent hearing on whether to issue a permanent restraining order, appellant's attorney argued that no allegations of sexual abuse had been pled or proved and that the information regarding the molest was "completely undocumented" and could not "be examined or verified." The attorney also pointed out that the minors were not in the mother's custody and there was already a court order prohibiting appellant from having contact with the minors or any other children because of his status as a sexual offender.

The court asked the mother's attorney where the disclosure was made, noting that it lacked "some specificity." The mother's attorney explained that the restraining order was based on the social worker's report stating that N.M. had made the disclosure to her caregivers.

Initially, the court denied the request for a restraining order, finding it was unnecessary because the minors were in the custody of the Department. However, when the mother told the court that she had unsupervised visitation with the minors, the court granted the restraining order "[t]o the extent that the children need to be protected when they are with the mother."² The court remarked: "One of the concerns that the department has always had with the mother is that she has some limitations [on] how much control she has of [appellant] and his coming by when he feels like coming by."³

² In fact, the mother's visitation was supervised.

³ Subsequent to the issuance of the restraining order, the social worker reported that N.M. had disclosed to her therapist that appellant had touched her "'girly parts'" and that the minor had pointed to the genital area on a doll to indicate what she meant by this. The minor also said she did not miss appellant because he did this. The report also contained information regarding an incident in which appellant drove by a park where the mother was having a visit with the minors, and that the mother did not report this incident to her or the police. The social worker also received information that the mother had recent contact with appellant while she was in the hospital, which the mother denied. Additionally, the minors' caregiver expressed concerns that the mother was having contact with appellant.

DISCUSSION

Appellant claims there were insufficient facts before the juvenile court to warrant the issuance of a restraining order. We disagree.

The juvenile court has the power to issue restraining orders in dependency proceedings to protect children and their parents from a variety of conduct, including molesting or sexually assaulting such persons, and may include a no-contact provision. (§ 213.5, subd. (d).) The court may issue such orders after notice and a hearing, and "[p]roof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these." (Cal. Rules of Court, rule 5.630(h)(2).) "If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed" on appeal. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.)

Appellant argues there was no showing as to when or where he could have had access to N.M. or when and how the mother might have permitted him such access. He maintains "the mere impossibility of contact between the minor and [him] should have defeated the issuance of the restraining order." But, as the Department points out, N.M. was in appellant's custody until she was two years old, and he had visitation with her until approximately a year before the application for a restraining order. Furthermore, appellant was in contact with his adult

son, who was N.M.'s caregiver and reported that appellant and the mother visited the minors in his home. Thus, we reject appellant's claim that he could not have had access to the minor.

Appellant also argues there was no evidence that the reported touching was inappropriate, as "there are a myriad of very appropriate caretaking reasons why such a touching might have occurred." However, given appellant's history of sexually molesting young girls and his psychological evaluation, which revealed continuing concerns about his proclivities in this regard, there was a sufficient basis for discarding any possible innocent interpretation of N.M.'s disclosure that appellant had touched her "'girly girly' parts."

Finally, appellant objects to the lack of details regarding the alleged touching as undermining the credibility of the report. But appellant received notice of the allegation, and a hearing was conducted before the juvenile court issued the permanent restraining order. Thus, appellant had an opportunity to explore the details of the report by presenting evidence had he chosen to do so. In any event, we are obligated to "view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court's determination." (*In re Cassandra B.*, *supra*, 125 Cal.App.4th at pp. 210-211.) When ruling on the restraining order, the juvenile court was entitled to consider its file, which contained appellant's history as a child molester and his

psychological evaluation. In this context, the juvenile court reasonably could find a sufficient basis for concluding N.M.'s allegation that appellant had sexually molested her was credible.

DISPOSITION

The juvenile court's order is affirmed.

SIMS, Acting P. J.

We concur:

NICHOLSON, J.

CANTIL-SAKAUYE, J.